

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

Re: *Ex Parte* Letter
CG Docket No. 02-278

Dear Ms. Dortch:

The Progressive Group of Insurance Companies ("Progressive") supports the request of Encore Capital Group, Inc. ("Encore") for confirmation that a business may use a predictive dialer to make informational calls to existing customers at mobile device contact numbers provided to the business by those customers.¹

As Progressive pointed out in its Comments filed in this proceeding on May 19, 2010, Progressive uses automated calling methods, including predictive dialers, to remind customers to take actions that will keep their liability policies in force and comply with state financial responsibility laws.² Progressive's ability to continue those programs at reasonable cost, or to continue them at all, will be jeopardized if Progressive is forced to place those calls manually.

In keeping with the need to contact customers efficiently for non-telemarketing purposes, Progressive and other commenters in this proceeding urged the Commission not to adopt a proposed rule that would require prior written consent to the placing of automated, informational calls to customer-provided mobile numbers.³ Progressive and other commenters urged the Commission to confirm its longstanding guidance, to the effect that a customer's decision to provide a mobile contact number satisfies the statutory requirement of prior express consent to place automated calls to that number.⁴ Progressive continues to support that result.

Progressive also agrees that predictive dialers should not be classified as automatic telephone dialing systems ("ATDSs") for purposes of the Telephone Consumer Protection Act ("TCPA").⁵

¹ Letter from Michele C. Farquhar to Marlene H. Dortch dated September 22, 2011, subject: Notice of *Ex Parte* Presentations CG Docket No. 02-278 ("*Encore Letter*").

² Comments of the Progressive Group of Insurance Companies in CG Docket No. 02-278 (May 19, 2010). The Progressive Group of Insurance Companies, in business since 1937, is one of the country's largest auto insurance groups, the largest seller of motorcycle insurance policies, and a market leader in commercial auto insurance based on premiums written.

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278 (Notice of Proposed Rulemaking released Jan. 22, 2010), ¶ 20.

⁴ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of ACA International for Clarification and Declaratory Ruling*, CG Docket No. 02-278 (Order released Jan. 4, 2008), ¶ 10.

⁵ 47 U.S.C. § 227(a)(1).

As Encore points out, predictive dialers do not have the capacity to generate telephone numbers randomly or in sequence, as the TCPA's ATDS definition requires, without fundamental changes to the architecture of those devices' hardware and software.⁶ Predictive dialers also offer positive consumer advantages, such as protection from improper calls and avoidance of the risk of human dialing error. When used to send informational messages, such as the calls Progressive places to avoid policyholders' loss of liability insurance coverage, predictive dialers provide an important service to consumers.

Accordingly, Progressive urges the Commission to issue a clarification or amendment of its regulations, in the pending rulemaking proceeding or as part of a separate proceeding, confirming that predictive dialers are not ATDSs when used to place informational calls to customer-provided mobile numbers.

Please let us know if we can provide further information.

Respectfully submitted,

Progressive Group of Insurance Companies

Richard Jablonski / AMC

Richard W. Jablonski
Senior Counsel

cc: Joel Gurin

⁶ *Encore Letter, supra*, p. 2.